

United States Government

Department of Energy

# Memorandum

DATE: November 15, 1991

REPLY TO: EH-20  
ATTN OF:

SUBJECT: Guidance on Implementation of the DOE NEPA/CERCLA  
Integration Policy

TO: Distribution

Note: Under the Secretarial Policy Statement on NEPA (June 13, 1994; Tab I-3) DOE relies, as a general rule, on the CERCLA process for review of actions to be taken under CERCLA. This Guidance is included in the NEPA Compliance Guide, however, because it is a useful discussion of the relationship among programmatic, sitewide, and project-specific NEPA reviews.

## Background

On October 26, 1990, EH proposed guidance on implementing the Department of Energy's (DOE's) policy of integrating the procedural and documentation requirements of the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), wherever practical, and provided an opportunity to comment. In response, we received fourteen sets of comments that, in general, supported the proposed NEPA pyramid approach. The final guidance (below) preserves this overall framework for NEPA/CERCLA integration. The Attachment presents responses to comments that were not incorporated in the final guidance.

The Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) held a workshop in July 1991 on the practical issues presented as Federal agencies seek to ensure that CERCLA actions satisfy those NEPA values that are neither in conflict with, nor redundant of, the procedures set forth in CERCLA and the National Contingency Plan. While it is the legal position of the United States, as expressed by the Department of Justice (DOJ), that NEPA does not apply to CERCLA activities, DOJ agrees that it is useful to forge a consensus concerning a practical and uniform approach to these policy issues.

DOE and other agencies participated in the EPA/CEQ workshop, which identified NEPA values that often lack sufficient analysis in CERCLA documents (such as cumulative, socioeconomic, and ecological impacts). EPA has announced an 18-24 month trial period of working with CEQ and other agencies to develop single documents that address the requirements of CERCLA and the values of NEPA, but has not yet issued formal internal guidance. All parties are determined that incorporating NEPA values into the remedial action process should not cause delays.

Some of you have asked whether we have a policy for integrating the NEPA process with the Resource Conservation and Recovery Act (RCRA) corrective action (cleanup) process. We do not have

such a policy, but are considering one, as it may provide the efficiencies of time and effort that we believe are provided by the NEPA/CERCLA integration policy. Because we do not have a policy, the final guidance does not refer to NEPA/RCRA integration.

## GUIDANCE

### Introduction

The DOE NEPA/CERCLA integration policy in DOE Order 5400.4 states:

Where DOE remedial actions under CERCLA trigger the procedures set forth in NEPA, it is the policy of DOE to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical.

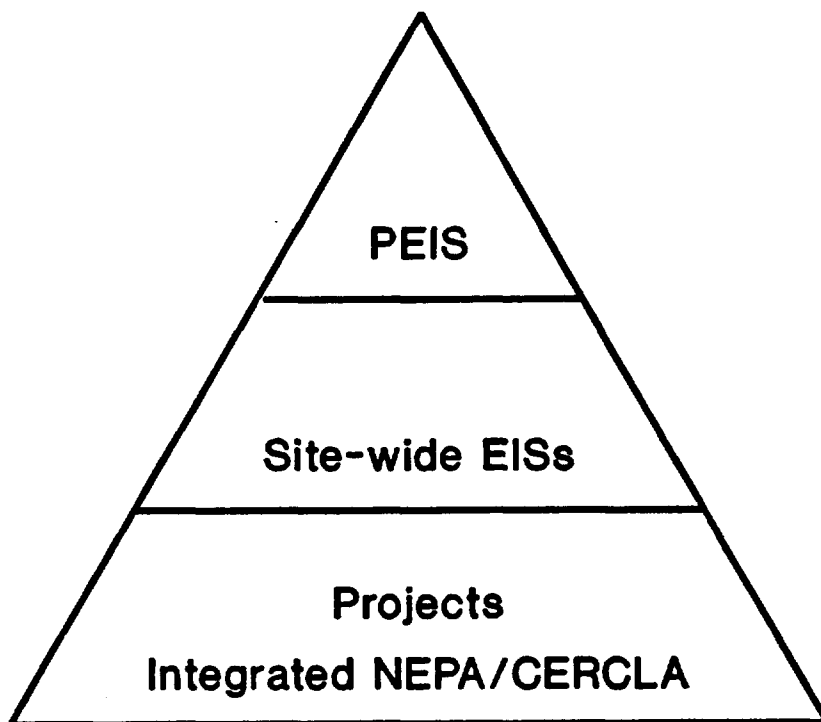
DOE's NEPA/CERCLA integration policy is not intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

To assist DOE implementation of the NEPA/CERCLA integration policy, EH, after consultation with the Office of General Counsel, provides the following guidance, based on a tiered approach to NEPA review.

### NEPA Pyramid

The CEQ NEPA regulations (40 CFR 1500-1508) envision a process of tiering NEPA documents from one level of decisionmaking to another. Tiering refers to the coverage of general matters in broader environmental impacts statements (EISs) with subsequent narrower EISs or environmental assessments (EAs) used to address more specific activities. Tiering is appropriate when it helps to focus on issues that are ripe for decision and exclude from consideration issues already decided or not yet ripe (40 CFR 1508.28).

DOE generally should use a tiered approach to NEPA review for its remedial and waste management activities. While CERCLA issues will be carefully considered at all levels, integration of NEPA and CERCLA documentation and procedures will occur primarily at the project-specific (e.g., operable unit) level. This approach can be depicted by a NEPA pyramid. (See Figure).



DOE NEPA STRATEGY  
FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

Programmatic EIS (PEIS) on Environmental Restoration and Waste Management: Addresses major DOE-wide policy issues such as regional vs. decentralized treatment, storage, and disposal; long-term land-usability; cleanup priorities; technology development.

Site-wide EISs: Address individual and cumulative impacts of sizing, siting, constructing, and operating treatment, storage, and disposal facilities plus cumulative impacts of cleanup actions at DOE sites.

Project-level Integrated NEPA/CERCLA Documents: Address impacts of individual cleanup actions; expect 75-90% of cleanup actions to be covered by categorical exclusions, Engineering Evaluation/Cost Analysis-Environmental Assessment/Findings of No Significant Impact (EE/CA-EA/FONSIs), or Remedial Investigation/Feasibility Study-EA/FONSIs (RI/FS-EA/FONSIs); very few integrated RI-FS/EISs anticipated.

FIGURE: NEPA PYRAMID

At the top of the NEPA pyramid is the programmatic EIS (PEIS) on a DOE-wide strategy for environmental restoration and waste management in preparation by EM; the Notice of Intent was issued October 22, 1990 (55 FR 42633). This PEIS will address major policy issues, such as regional vs. decentralized treatment, storage, and disposal alternatives; long-term land-usability policies; cleanup priorities; and alternative technology development approaches. (A DP PEIS on reconfiguring the nuclear weapons complex also is being prepared; the Notice of Intent was issued February 11, 1991 (56 FR 5590).)

In the middle of the NEPA pyramid are site-wide EISS (for major DOE sites) that may either encompass all site operations or focus on selected functions, such as environmental restoration and waste management activities. Site-wide EISS will address the individual and cumulative impacts of ongoing and proposed site activities. With regard to impacts from environmental restoration and waste management activities, site-wide EISS should address the cumulative impacts of all reasonably foreseeable cleanup actions at a site and of sizing, siting, constructing, and operating treatment, storage, and disposal facilities to support both cleanup actions and continuing operations. (This discussion applies to site-wide EAs as well. Although DOE's policy is to prepare site-wide EISS for certain large multiple-facility DOE sites, an EIS or EA may be prepared for other, smaller sites.)

Site-wide EISS assess impacts from continuing and proposed actions. Site characterization data may be incomplete when a site-wide EIS is prepared and some impacts analyses may have to be based on estimates. Where adequate information is available, site-wide EISS should support NEPA records of decision (RODs) for new (or major modifications to existing) treatment, storage, or disposal facilities (including the location and approximate size of new facilities). The site-wide EISS also should support NEPA RODs for the overall approach to environmental restoration activities, by including the estimated maximum impacts (for example, the maximum increases in air emissions expected from existing or new facilities or from ground disturbance). Pollution prevention and waste minimization measures should be factored into the alternatives to be analyzed.

NEPA decisionmaking based on site-wide EISS may need to be sequenced in order not to prejudice decisionmaking under CERCLA. This can be done by issuing phased site-wide NEPA RODs or revised RODs, as long as the new or revised decision is adequately supported by the site-wide EIS. This is particularly important with regard to NEPA review for individual cleanup projects. Although a site-wide EIS may be used for NEPA review of individual cleanup projects, we expect,

as noted above, that there will not always be enough information available when a site-wide EIS is prepared to adequately incorporate NEPA values for individual projects; therefore, NEPA values should be incorporated into CERCLA reviews, as discussed below.

At the bottom of the NEPA pyramid are the large number of individual cleanup actions. We expect that 75-90% of these cleanup actions will be adequately covered for NEPA purposes by categorical exclusions (CXs), or by EA-level NEPA reviews and corresponding findings of no significant impact (FONSIs). DOE established CXs pertaining to cleanup actions on September 7, 1990 (55 FR 37174), and EH-1 issued guidance on "Use of the NEPA Categorical Exclusion for Removal-type Actions" on March 19, 1991.

For EA-level NEPA reviews, integrated NEPA/CERCLA documents should be prepared to address the impacts of individual cleanup actions, normally by operable unit. We expect that with adequate planning, a well-prepared CERCLA document (RI/FS or engineering evaluation/cost analysis (EE/CA)) would require little or no modification to address NEPA values adequately.

To facilitate their issuance by the Department, these integrated documents should be coordinated with the Office of Environmental Compliance as they are developed, specify that they have been prepared to satisfy both the NEPA and CERCLA processes, and be titled an RI/FS-EA or EE/CA-EA when undergoing state and EPA review. Although a completed RI/FS or EE/CA may be submitted for adoption as an EA, we do not recommend such deferral of NEPA review because NEPA values should be considered in the earliest possible stages of decisionmaking. When major new facility construction projects (e.g., incinerators, disposal facilities) with potentially significant impacts have been adequately covered in the site-wide EISs, we expect there will be very few integrated RI/FS-EISs at the operable unit level.

If an EE/CA-EA or RI/FS-EA is prepared for a project, the corresponding FONSI should be issued before the CERCLA ROD. If an RI/FS-EIS is prepared for a project, the NEPA and CERCLA RODs should be integrated to the extent practical.

#### Coordination Among Pyramid Elements

Preparation of site-wide EISs should be closely coordinated with the development of the PEISs but should not necessarily await completion of the PEISs. Once a PEIS is completed, however, a site-wide EIS that was completed earlier should be reviewed to determine if a supplement or a revised ROD for the

site-wide EIS is needed to conform to decisions arising from the PEIS.

Likewise, NEPA review for individual cleanup projects should be closely coordinated with the development of the corresponding site-wide EIS but should not necessarily await completion of the site-wide EIS. Once the site-wide EIS is completed, however, any earlier decisions for specific projects that have not been implemented should be examined to determine if they conform to the later decisions arising from the site-wide EIS or if changes in the projects need to be made.

Project-specific NEPA/CERCLA documents should, where appropriate, reference the site-wide EIS's cumulative impacts assessment of multiple related cleanup actions and major new facilities and update that assessment as necessary. Although cumulative impacts may be assessed more appropriately and efficiently in site-wide EISs, a project-level review that precedes a site-wide EIS should assess potential cumulative impacts to which that project would contribute.

#### Interim Actions

Interim actions that are within the scope of an ongoing PEIS or site-wide EIS are permissible under DOE's NEPA/CERCLA integration policy if they satisfy the requirements of CERCLA per the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.430(a)(1)(ii)(B), and NEPA per 40 CFR 1506.1 and 10 CFR Part 1021 (when promulgated). Nevertheless, under this policy these NEPA provisions may not interfere with full and timely performance of DOE's CERCLA obligations. EH-1 is developing guidance concerning interim actions under NEPA.

We are planning to have a one-day DOE-wide NEPA/CERCLA Workshop in the near future for NEPA and CERCLA staffs from Program and Field Offices to discuss NEPA/CERCLA strategies being developed and implemented for their sites. If you have any questions on this guidance, or would like to participate in planning for the DOE NEPA/CERCLA workshop, please contact Kathleen I. Taimi, Director, Office of Environmental Compliance, on (202) 586-2113 (FTS 896-2113), or Carol M. Borgstrom, Director, Office of NEPA Oversight, on (202) 586-4600 (FTS 896-4600).



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Attachment

Attachment: Responses to comments on "Proposed Guidance on Implementation of the DOE NEPA/CERCLA Integration Policy" that were not incorporated in the final guidance

Many commentors requested detailed guidance on how to integrate the two processes. We plan to provide detailed guidance gradually, as we gain experience. Some requested that additional EA and EIS classes of actions regarding restoration actions be added to the NEPA rulemaking package. As DOE gains experience with restoration actions, we may propose new or amended classes of actions in future rulemakings. There were also several questions on the general structure and intent of site-wide NEPA documents, which we will address in separate guidance.

There was a request that the guidance establish NEPA review schedules to ensure that time limits established in interagency agreements are met. The variety of the type and complexity of DOE's remedial actions precludes establishing a time period that would be practical for all actions. Even if we were to prescribe time limits, they would be permissive rather than mandatory. It was similarly suggested that approval of CXs be presumed after a defined time period following submission of the CX to the approving authority, but this would be contrary to SEN-15-90 and DOE 5440.1D, the NEPA Order.

One commentor requested that the guidance address the contractor conflict-of-interest issue (i.e., identify portions of NEPA documentation and cleanup work that could be accomplished by Management and Operation (M&O) contractors). In the CEQ regulations, there is a requirement (40 CFR 1506.5) that contractors preparing EISs state that they have no financial or other interest in the outcome of the project. This requirement does not apply to the preparation of EAs. Because we expect that most NEPA/CERCLA integrated documents will be EA-level reviews, we do not expect to encounter many NEPA conflict-of-interest concerns. The conflict-of-interest issue may be moot, however, if DOE proceeds with an alternative business strategy for environmental restoration (55 FR 45844; October 31, 1990). Under this alternative strategy, an Environmental Restoration Management Contractor (ERMC) would assist DOE in managing all the environmental restoration work at each DOE field office, a function currently being performed by M&O contractors at most DOE sites. The strategy is still being developed, and roles have not been defined. DOE has issued a draft Request for Proposals for the Fernald Environmental Management Project (56 FR 34057; 56 FR 34057), however, that would implement the ERMC strategy.

A question was asked about criteria for deciding whether NEPA procedures had been triggered by CERCLA actions and who decides whether it is practical to integrate NEPA and CERCLA. DOE's policy is to incorporate NEPA values into its CERCLA process (whenever the CERCLA process is followed) even if NEPA does not apply to CERCLA actions as a matter of law. Whether deviations from this policy can occur because of impracticality will be decided case-by-case by consultation among EH, GC, and EM. We are working to eliminate obstacles to integration; this guidance is part of that work.